CIRCUIT COURT OF PITTSYLVANIA COUNTY.

ANDERSON v. DUNCAN, TREASURER.*

TAXATION—*Power of counties to impose tax on incomes denied—Section* 833, *Va. Code* 1904. Subsection 2 of section 833 Va. Code 1904, giving to the Board of Supervisors of each county the power to fix, at their regular meeting in July, the amount of county levies for the ensuing year and to order the levy on all *property* assessed with state taxes within the county, does not empower the Board of Supervisors to tax the *incomes* of the citizens of the county.

Upon a motion to dissolve an injunction.

HON. E. W. SAUNDERS, Judge:

The question presented in this case is whether the county of Pittsylvania, or for that matter any county, is empowered to tax the incomes of its citizens under section 833, Va. Code 1904. Subsection 2 of this section is as follows: "To fix the amount of the county levies for the ensuing year, to order the levy on all property assessed with State tax within the county," etc.

The right of a county to tax incomes will be found, if it exists at all, in the words "to order the levy on all property assessed with State taxes within the county." Indeed the county rests its claim to this right upon this portion of the subsection.

Scanning the citation above a little more closely, it will be perceived that even though incomes may be considered in a measure as assessed with State taxes, yet this assessment will not give the counties the right to collect an income tax, unless incomes are property, that is, property in its ordinary acceptation in our tax laws, and not property in any large general sense.

In the larger view, and in its ordinary use in common parlance, the word property includes incomes. But in our tax laws, and in the organic law, "property," and "incomes," are used in juxtaposition, not as equivalent expressions, but to convey distinctly different ideas.

The burden is on the county to show that the word "property," in this connection, clearly comprehends incomes, for if any doubt exists on this point, that doubt must be resolved against the right of the county to tax this particular subject matter. The legislature

*Reported by C. B. Garnett.

possesses the "full, absolute, and sovereign" power of taxation, subject to the inhibitions and restrictions of the organic law, State and Federal. But this is not true of a municipality, or of a county. "Counties and corporate bodies have no such inherent power (of taxation) as adheres in the sovereignty of the State." *Schoolfield, &c.* v. *City of Lynchburg,* 78 Va. 372.

It is a principle universally declared, and admitted, that municipal corporations can levy no taxes, general or special, upon the inhabitants, or their property, unless the power be plainly and unmistakably conferred. Id. This applies as well to counties, as to municipal corporations. The power to levy any tax by a corporation cannot be inferred from legislative authority, unless such appears to be the clear legislative intent. The burden is upon the corporation to show the grant (to lay the taxes) by express words or necessary implication. For otherwise it cannot be justified in the exercise of this high prerogative of sovereignty.

Statutes authorizing the levying of taxes are strictly construed, and if there is much doubt, that doubt exempts the citizen from the burden. Laws conferring the power of taxation on a municipal corporation are to be construed strictly. Id. Laws imposing a license, or a tax, are strictly construed, and whenever there is doubt as to the meaning or scope of such laws, they are construed more strongly against the government, and in favor of the citizen. *Brown's Case,* 98 Va. 370.

Agreeably to these authorities, and upon reason, the right asserted by the county in this case would have to be denied, unless it was plainly conferred by subsection 2. A doubt on this point would be fatal to the county's contention.

For the purposes of taxation there appears to be a well marked distinction in the constitution between "property," and "incomes," and "licenses." This distinction is maintained by the Supreme Court in numerous decisions. Most, if not all, of these decisions are based upon the constitution of 1869, but they have lost nothing of their appropriateness by the promulgation of our present constitution. This instrument maintains the distinction between "property," and "licenses," and "incomes," found in the constitution of 1869.

Section 168 of the constitution of 1902, provides: All property, except as hereinafter provided, shall be taxed; all taxes

whether State, local, or municipal, shall be uniform upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.

Section 170 provides: The General Assembly may levy a tax on incomes in excess of $600 per annum; may levy a license tax upon business which cannot be reached by the *ad valorem* system, and may impose State franchise tax.

The constitution requires that all property shall be taxed, and then, to show that it does not mean to comprehend incomes by the word property, it provides by a later section that the General Assembly may levy a tax on incomes, etc. In this connection, see *City of Norfolk* v. *Griffith-Powell Co.*, 102 Va. 119.

The case of *Schoolfield's Exor.* v. *City of Lynchburg*, 78 Va. 366, is perhaps the most striking of all of the cases that may be cited in support of the proposition, that property, as used in the constitution, does not include income and license taxes. It appears from the recital of facts in this case that Schoolfield devised and bequeathed certain real and personal property to his nephews, and nieces, and others. The real estate so devised was within the corporate limits of the city of Lynchburg. The city of Lynchburg proceeded to impose a collateral inheritance tax upon the property disposed of by the will. The collection of this tax was stayed by an injunction, and on the hearing, the court decided that the ordinance was effective only as to the value of so much of the real estate passing to the legatees, and devisees, as was situated within the corporate limits of the city.

Section 33, chapter 54 of the then code of Virginia, contained the following provision, which was relied upon by the circuit court *supra* to support its ruling: "The levy so ordered may be upon any *property* in said town, and on such other subjects as may at the time be assessed with State taxes against persons residing within the town."

Clearly that which passed by the will, the things real and personal, were property, and the learned judge of the circuit court doubtless considered that in allowing the tax upon the real estate which not only passed, but was located in the city, he was placing the right of the city, in the respect claimed, upon the most solid and plainly defensible ground. But the Supreme Court considered that the conclusion reached by the circuit court was erroneous,

and that the collateral inheritance tax was not a tax on the subject matter actually received by the legatees and devisees. In other words the appellate court held that the collateral inheritance tax was a tax, not on property, but on the *transitus* of property. "This tax cannot, in any proper legal sense, be regarded as a tax on property. The intention of the legislature was plainly to tax the transmission of property by devise or descent, to collateral kindred. It is a premium paid for the right enjoyed." Case cited *supra,* p. 370.

The words "upon any property in said town," cannot be held to confer the power, because, as we have seen, this is not a property tax, although the corporation was restrained by the decree of the lower court from levying this tax upon such of the collateral inheritance as did not lie within the town.

The provision is general, and was intended to apply to the general subjects of taxation, such as are provided for taxes generally, and ought not to be extended to include a special power to levy this special tax, unless the authority be expressly given by law. Id. p. 374.

In support of the proposition that "property," as found, and used, in the organic law, does not include incomes, see *Com.* v. *Moore,* 25 Gratt. 951; *Llewellen* v. *Lockharts,* 21 Gratt. 570; and *City of Norfolk* v. *Griffith-Powell Co.,* 102 Va. 115.

An income is that which proceeds from what is generally spoken of as property, or from labor, or business. It is the gain which accrues from these sources, and the word is applicable to the periodical payments in the nature of rent, usually made under mineral leases. Now rent, if we refer to the thing which is actually paid over, is undoubtedly property, but the thing paid over, properly speaking, is not rent. Mr. Minor defines rent as follows: It is the right to a certain profit issuing periodically out of lands, and tenements corporeal, in retribution for the land which passes. The definition of income may be assimilated to this definition of rent, and when this is done, it will be more apparent than before, that the right of the county "to order the levy on all property assessed with State taxes within the county," does not afford the right to impose a tax on incomes.

It is plainly within the power of the General Assembly to give the counties the right to tax incomes, and impose license taxes, but

until it is equally plain that this power has been conferred, the rules of construction cited above compel the courts to conclude that the power has been denied.

It is considered that the words "to order the levy on all property assessed with State taxes within the county," are "intended to apply to the general subjects of taxation, such as are provided for taxes generally, and will, and ought not to be extended to include the special power to levy this special tax." The injunction heretofore awarded in this case will be perpetuated.